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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/591,170	08/30/2006	Jari Rasanen	0696-0250PUS1	6057
2292 7590 02/03/2011 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747			EXAMINER ELKINS, GARY E	
			ART UNIT 3782	PAPER NUMBER
			NOTIFICATION DATE 02/03/2011	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary

Application No.

10/591,170

Applicant(s)

RASANEN ET AL.

Examiner

Gary E. Elkins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/24/10 & 11/2/10.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The following each lack antecedent basis in the claims: claim 1, line 5, “the cap”, claim 7, last line, “the reclosed package”, claim 8, “the bottom”, “the package on top” and “the packages” and claim 11, line 2, “the perforation line”.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-5 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elias (US 4,209,126) (fig. 9 emb) in view of Smith (US 4,171,084) and Knudson (US 4,044,941).

Elias discloses a container including a lid formed by an outer overcap and an inner membrane where the membrane portion of the lid is bonded to an outwardly and downwardly formed collar of the container. Elias does not form the container as a cup and does not disclose formation of the cup and lid from polymer coated board. Smith teaches that it is known to make a container using polymer coated board. Knudson teaches that it is known to make a container with an overcap and sealed membrane as a cup. It would have been obvious to form the container of Elias using polymer coated board as taught by Smith since laminate board containers provide

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good heat sealing between the polymer layers and paperboard is a cheap and widely available substrate in the marketplace. It would further have been obvious to make the container of Elias as a cup as taught by Knudson as a matter of choosing the size and shape of the desired container dependent upon the quantity and type of contents one wishes to package.

4. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 4 above, and further in view of Maruhashi et al (US 4,551,366). Modified Elias evidences all structure of the claimed package except an inner oxygen barrier layer. Maruhashi et al teaches that it is known to make a sealed package with an oxygen barrier layer to allow packaging of contents sensitive to oxygen. It would have been obvious to include an oxygen barrier layer in modified Elias as taught by Maruhashi et al to allow the packaging to be used for oxygen sensitive contents.

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Knudson (US 4,044,941). Modified Elias evidences all structure of the claimed package except a center recess to allow friction reclosure of the lid after opening. Knudson teaches that it is known to form the a lid with a center recess which forms an inner friction wall engaging the inner portion of body of the container opposite an outer latch 36 during reclosing of the lid. It would have been obvious to make the lid of modified Elias with an inner recess as taught by Knudson to enhance the engagement of the lid with the container during reclosure.

6. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Hawley (US 3,095,132). Modified Elias evidences all structure of the claimed package except a stacking recess in the lid. Hawley

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teaches that it is known to make container lids with a central recess to facilitate stacking multiple containers on top of one another. It would have been obvious to make the lid in modified Elias with a stacking recess as taught by Hawley to prevent shifting of stacked containers.

7. Claims 1-5, 7, 9, 10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Collins (UK 2,236,099) (fig. 3 emb.) in view of Kleemola (US 5,236,120). Collins discloses all structure of the claimed package except formation of the package from a fibre-based material. Kleemola teaches that it is known to make a sealed package using fiber-based material. It would have been obvious to substitute a fiber based material for the molded plastic in the package of Collins as taught by Kleemola since fiber based materials are readily available and cheaper to produce. It is noted that the construction as shown in fig. 3 of Collins is considered to include a mantle bent downwardly during formation at 6, 14 and that the collar 6, 14 is diverging from the mantle 3 as claimed. Also, the lid is downwardly oriented at 24 as claimed. With respect to claim 3, the cup collar and the lid rim are enlarged conically downwardly at 14, 24, respectively.

8. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 4 in paragraph 7 above, and further in view of Maruhashi et al (US 4,551,366). Modified Collins evidences all structure of the claimed package except an inner oxygen barrier layer. Maruhashi et al teaches that it is known to make a sealed package with an oxygen barrier layer to allow packaging of contents sensitive to oxygen. It would have been obvious to include an oxygen barrier layer in modified Collins as taught by Maruhashi et al to allow the package to be used for oxygen sensitive contents.

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9. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 in paragraph 7 above, and further in view of Hawley (US 3,095,132).

Modified Collins evidences all structure of the claimed package except a stacking recess in the lid. Hawley teaches that it is known to make container lids on containers having tapered sidewalls with a central recess to facilitate stacking multiple like containers on top of one another. It would have been obvious to make the lid in Collins with a stacking recess as taught by Hawley to prevent shifting of stacked containers.

Allowable Subject Matter

10. Claims 11 and 12 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

11. Applicant's arguments with respect to claims 1-10 and 13 have been considered but are moot in view of the new ground(s) of rejection. The previous rejections over Heyn have been withdrawn in view of the English language translation of the priority application filed 02 November 2010. However, upon further consideration, claims 1-10 and 13 are not considered patentable in view of the newly applied prior art as set forth above.

Conclusion

Any inquiry related this office action or any other office action for this application should be directed to Examiner Gary Elkins at the number listed below.

If the Examiner is unavailable and you need to talk to someone sooner, the Examiner's supervisor, Mr. Nathan Newhouse may be contacted at the number listed below.

Information regarding the status of an application may also be obtained by accessing the PAIR system. Information about the PAIR system can be obtained at the website <http://pair-direct.uspto.gov> or by contacting the Electronic Business Center (EBC) at (866) 217-9197 (toll

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free). You may also contact a USPTO Customer Service Representative or access the automated information system at 1-800-786-9199 (in USA or Canada) or 1-571-272-1000.

/Gary E. Elkins/

Primary Examiner, Art Unit 3782

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